



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/551,026 04/17/00 KOTLIAR I IKK-8

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IGOR KOTLIAR
P O BOX 2021
NEW YORK NY 10159-2021

EXAMINER

CAPOSSELA, R

ART UNIT

PAPER NUMBER

3744

DATE MAILED:

06/20/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/551,026

Applicant(s)

Kotliar

Examiner
Ronald C. Capossela

Art Unit
3744



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three (3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on May 2, 2001

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-21 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-21 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

16) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

20) ☐ Other: _____

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DETAILED ACTION

Response to Amendment

In view of the applicant's amendments to the claims the requirement for restriction has been withdrawn and an action on the merits of all claims 1 - 21 is hereby set forth below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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Claims 1, 3, 5 - 9, 11, 13, 15 - 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gast Jr. et al (US Patent No 5,799,495) in view of Woodruff (US Patent No 5,036,753). Gast Jr et al shows the overall combination of a chamber 22 having a controlled atmosphere, a nitrogen generator 26 for separating air into a nitrogen rich stream 40, control system 28 for monitoring the oxygen level within the chamber, means 44 for directing the nitrogen rich air into the chamber and means 52 for expelling the atmosphere from the chamber. Absent therefrom is the concept of utilizing a membrane separator for increasing the nitrogen concentration in the air. Woodruff teaches that it is old in the prior art to provide a membrane for directing a nitrogen rich air stream into chamber 12 for the same reasons as Gast Jr. et al. Therefore to one having ordinary skill in the art it would have been obvious to modify Gast Jr. et al and substitute the membrane separator 35 of Woodruff for the nitrogen separator 26 thereof because it would be the substitution of one type of generator for another both of which are well known equivalents in the art.

Claims 2, 10, 20, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gast Jr. et al/Woodruff as applied to claims 1 and 8 above, and further in view of Barbe (US Patent No. 5,472,480) which teaches that it is old in the prior art to utilize a semipermeable membrane for providing nitrogen rich air with a 1% to 12% oxygen content. To modify Gast Jr. et al/Woodruff and provide this special atmosphere thereto in view of Barbe would have been obvious to one having ordinary skill in the art because the ability of a skilled artisan to provide a specific oxygen concentration is easily computer simulated by a process engineer at his/her

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workstation. Since the upper limit of the Barbe range is 12% and the lower limit of the applicant's range is 12% the applicants claims are considered obviated.

Claims 4, 12, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gast Jr. et al/Woodruff as applied to claims 1 and 8 above, and further in view of Sugiyama et al (US Patent No 4,896,514) which teaches that it is old in the art to separate gases by adsorption. To one having ordinary skill in the art it would have been obvious to modify Gast Jr. et al/ Woodruff with a gas adsorption means because it is just one of many ways to separate or concentrated a gas in a gas mixture and would not warrant patent protection.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Drawings

The drawings file with this application have been approved by the Official Draftsman.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Ronald C. Capossela whose telephone number is (703) 308-0688.

RCC
June 18, 2001



Ronald Capossela
Primary Examiner